



A N

E X T R A C T, &c.



[Price 2s. 6d.]



127 d 15
A
AN EXTRACT FROM THE CASE OF
THE OBLIGATION
ON THE
ELECTORS OF ETON COLLEGE
TO SUPPLY

K
ALL VACANCIES IN THAT SOCIETY

With those who are or have been Fellows of KING'S COLLEGE,
CAMBRIDGE, so long as Persons properly qualified are
to be had within that Description.

BY A LATE FELLOW OF KING'S COLLEGE, CAMBRIDGE.

Thomas Ashton.

PART I.
OF THE ELECTION OF FELLOWS.

"*Nec diversa tamen, qualis decet esse sororum.*"

VIRG. Æn. Lib. i.

" ——— *Alterius sic*

"*Altera poscit opem res, et conjurat amicè.*"

HOR. Art. Poët.

Ἡ Φιλαδελφία μενέτω. Heb. xiii. 1.

L O N D O N, MDCCLXXI.

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T O

The Right Reverend Father in God, JOHN Lord Bishop
of LINCOLN, Visitor of the Two Royal Foundations of
King HENRY the Sixth.

My Lord,

THESE papers, which were thrown together for
my own information, are not intended to convey
any to your Lordship, who are so expert in questions
of this nature, whose province it is to determine, and
whose sentence is decisive in all points relative to the
statutes of the two royal foundations.

They are submitted with all deference to your Lord-
ship's judgement; for the reason which induced me first
to collect them—to correct or confirm my own.

They are submitted, my Lord, with less diffidence
at this juncture, as the late repeated decisions of Eton
College, in favour of their sister foundation, have given a
sort of sanction to the opinion they were intended to
support.

After an uninterrupted tenor of almost a century, that unwarranted practice has received a fatal blow; and it is no wonder if the expectations which were raised upon it, and are now tottering with it, should murmur as they expire. But right and truth have, at last, burst forth from the obscurity in which the glosses of self-interest had too long involved them.

I mean not to offer any apology for that respectable body, who are so much more able to defend themselves. The reasons which induced them to adopt, will probably encourage them to support the plan; as they have now wiped away the only colour of an argument the contrary practice could ever pretend to—uninterrupted usage. It is not likely that they should soon recur to a measure they have so lately renounced. One may rather suppose that the social and sacred ties will now begin to recover their hold, and the reverence for the statute revive.

By this means all heterogeneous mixtures will be gradually purged off, and the constitution of the two colleges be restored in the similitude of all its parts conformably to its fair archetype,

—— ut et pes et caput unū

Reddatur formæ ——

corresponding with the confessed intention, the express direction, and repeated desires of its royal and venerable founder.

I should

I should have been wanting to the duty I owe to the two societies, if I had been silent on an occasion so interesting to them both. I should have been wanting to the duty I owe to your Lordship, in your relation to those societies, and experienced candour to myself, if I had neglected so inviting an opportunity of declaring publicly how much I am,

My Lord,

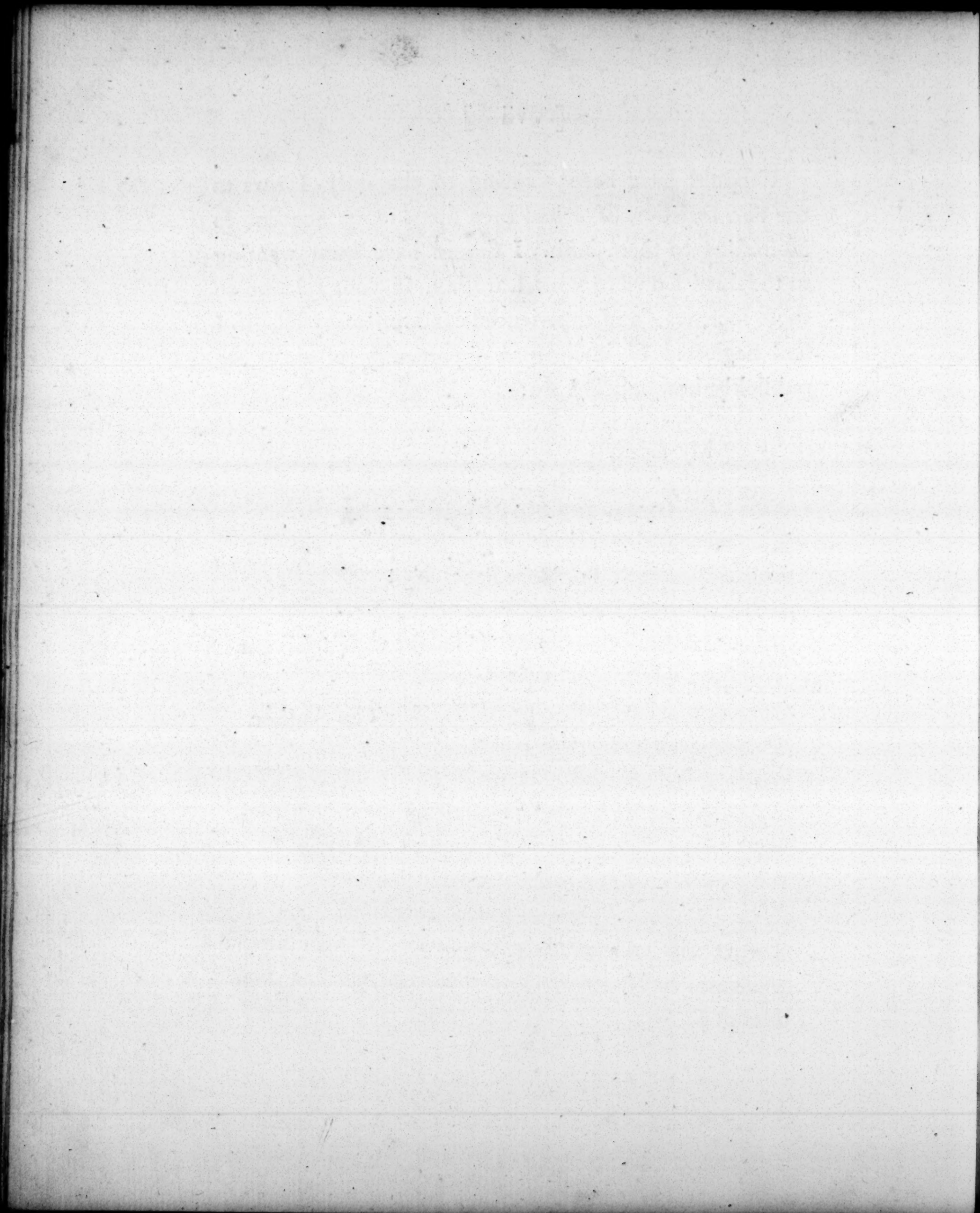
Your Lordship's most obliged,

most obedient, and

most faithful humble servant,

London,
March 25, 1771.

The Author.





A D V E R T I S E M E N T.

THE partizans of the Alien Claim, not able to maintain themselves on the foot of the statute, have been obliged to shift their ground, and endeavoured to make a stand upon Archbishop Laud's determination.

The practice of reserving the sixth and seventh vacancy for this purpose, not having taken place till after the date of the mandate *, gave some colour to a supposition that it might have taken its rise from some injunction contained in that decree; but this (like most vulgar errors when traced back to their original) vanishes into smoke.

* It did not take place till after the Restoration of Charles the Second, as appears from a petition from King's College to that Monarch, in the Appendix.

x A D V E R T I S E M E N T.

This is the subject of the following tract--which has been suppressed for near twenty years, on account of two as amiable characters as ever adorned any society, who had been unfortunately involved in the common error: but, as one of them is now beyond the reach of censure, and the other is daily by all possible acts of justice and generosity raising himself above it; it is now offered to the public as a caution against future mistakes.

Indeed as men's actions are the best interpretations of their opinions, the college of Eton have already published the same doctrine to the world, in their unanimous decision on the two last vacancies, occasioned by the death of one and the voluntary resignation of the other of those excellent persons.

The end of these Reflections, then, is to abate the ardor of every candidate of character and principle, in his pursuit of an object which can neither be conferred on him with justice, nor accepted by him with honour; at least, it is hoped that those on whom no impression can be made by argument, will be considered by the electors as not the most notably disposed to promote the credit and interest of the college.

It

It is, I apprehend, the uniform practice of all colleges to exclude Aliens from those fellowships, the succession to which is limited by *local* descriptions. What is there particular in the college of Eton to make it an exception to the general rule? Let these sanguine gentlemen try their fortune only at Winchester College (which the Archbishop assures us was the model of ours) and let us hear the result of their canvass there!

But the matter is serious—I will treat it seriously.

The imputation of having *robbed* any one, is infamous; of having robbed a *charity*, insupportable.

You will allow 500*l.* (suppose) to be a considerable sum to have been extorted from the poor! What will you say to 5,000*l.*? to twice five? to 20,000*l.*? Yet somewhat little less than this will be the case of him who shall hold this fellowship with its emoluments *unstatutably for forty years!* Unconscious of the injury, and as much surprised at the discovery as the disconcerted Monarch, from whom the subtle Nathan drew, by a well-disguised allusion, the sentence on himself; though all the while, perhaps, there is under his very eye an
inculpable,

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inculpable, ingenious, indefatigable, and indigent man, with the best title in the world to what he usurps! Look ye to this! ye who shall withhold or shall wear the honours of such a man!

It is with concern I see the necessity of throwing out these hints for future admonition. *Discite JUSTITIAM moniti.*

But the pill is, I fear, already too bitter: I will make it up in as small a size as I can.

London,
March 26, 1771.

A N



E X T R A C T, &c.



PART THE FIRST.

Of the ELECTION *of the* FELLOWS.

SECTION THE FIRST.

Of the general Practice of ETON COLLEGE, in the ELECTION of FELLOWS, since the Time of Archbishop LAUD's Determination.

THE original number of fellows at the foundation of the college was ten: this number had been reduced long before the time of archbishop Laud's determination to seven. From some time posterior to the date of that, the custom has been—To supply the *five first* vacancies with such persons as are or have been *fellows of King's College, Cambridge*, without admitting the

B claim

claim of any other person from any other college; and to fill up the remaining two with persons from any other college in either university indiscriminately, without attending to the claim of the fellows of King's College.

On which account the two last have been distinguished variously by the names of foreign, alien, and Oxford fellows.

Let us see how this practice can be supported, either by the statute or by the archbishop's determination.

“ De modo & formâ eligendi socios perpetuos in
“ Collegium, & juramento per eosdem præstando.

“ Item statuimus, ordinamus et volumus, quod in
“ dicto collegio nostro de Etonâ, præter et ultra nume-
“ rum dictorum præpositi et septuaginta scholarium sint
“ semper et continuè, ut prædictum est, Decem presby-
“ teri seculares focii perpetui, sufficientis literaturæ,
“ legendi et cantandi peritiam et habilitatem habentes,
“ per præpositum et socios presbyteros communiter eli-
“ gendi et assumendi: sic videlicet quoties locum ali-
“ cujus de dicto presbyterorum fociorum perpetuorum
“ numero vacare contigerint præpositus et presbyteri focii
“ perpetui omnes, et singuli tunc præsentés, citius quo
“ poterint

“ poterint in ecclesiâ collegiatâ dicti regalis collegii pro
 “ novo focio presbytero providendo conveniant, et præ-
 “ stito per ipsorum presbyterorum fociorum quemlibet
 “ præposito eos onerante ad sancta Dei evangelia corporali
 “ juramento quod, cessantibus amore, odio, favore,
 “ partialitate et affectione sinistris cujuscunque tales in
 “ hac parte nominabunt et eligent, quos pro honore utili-
 “ tate et commodo dicti collegii bene et notabiliter dis-
 “ positos crediderint; præposito primitus coram dictis
 “ presbyteris confirmile juramentum præstante, vicepræ-
 “ posito juramentum hujusmodi exigente, vel presbytero
 “ focio alio seniore, idem præpositus et focii alium pres-
 “ byterum seu presbyteros loco deficientis focii presby-
 “ teri hujusmodi, seu fociorum presbyterorum deficien-
 “ tium, de fociis collegii nostri regalis Cantabrigiæ vel de
 “ his qui prius fuerant in eodem et ex causis licitis et
 “ honestis recesserunt ab ipso, vel de presbyteris con-
 “ ductitiis ejusdem collegii de Etonâ, vel de his qui
 “ prius fuerant in eodem, habilem et sufficientem aut
 “ alias de collegiis vel locis aliis juxta ipsorum discre-
 “ tionem nominent et eligant presbyterum vitæ lauda-
 “ bilis, morum ac conditionis ac conversationis honestæ,
 “ in temporalibus providum et in spiritualibus circum-
 “ spectum, sufficientis literaturæ, legendi et cantandi

“ peritiam et habilitatem habentem, ac in facultate sacræ
“ theologiæ magistrum, seu bacalaurium, aut in jure
“ canonico doctorem, qui prius tamen in artibus rexe-
“ rat, seu ad minus artibus magistrum; hoc etiam ad-
“ jecto, quod cum nominationem et electionem hujus-
“ modi fieri contigerit; tot nominentur personæ habentes
“ conditiones et qualitates prædictas, quod veri-
“ simile sit ex ipsis nominatis suppleri debere presbytero-
“ rum numerum requisitum; quibus quidem nomina-
“ tione et electione sic factis, prædictus præpositus et socii
“ presbyteri prædicti collegii de Etonâ, citius quo com-
“ modè poterint infra sex dies nominationem eandem
“ sequentes, presbyteris sic nominatis et electis seriatim
“ ordine illo quo fuerint nominati, et prout opus fuerit,
“ pro suppletionem numeri prædicti per ipsorum literas
“ sigillo communi dicti collegii de Etonâ sigillatas in-
“ timare celeriter teneantur; quorum quemlibet taliter
“ nominatum citius quo poterit infra decem dies a tem-
“ pore intimationis sibi factæ suum, si consentire volu-
“ erit nominationi et electioni de se factis, consensum
“ præstare, ac præpositum, vel vicepræpositum collegii
“ nostri de Etonâ certificare literatoriè volumus in hac
“ parte, sub pœnâ amissionis juris seu tituli ei ex nomi-
“ natione, seu electione hujusmodi quomodolibet ac-
“ quisiti;

“ quisi; proviso semper quod cujuscunque presbyteri
 “ hujusmodi nominatio, electio et admissio ejusdem in
 “ collegio nostro de Etonâ infra unius mensis spatium
 “ a tempore vacationis prædictæ continuè numerandi
 “ modo et formâ prædictâ finaliter terminentur; alioqui
 “ si dictorum præpositi et sociorum negligentia, dolo,
 “ culpâ, seu malo ingenio quocunque, infra tempus præ-
 “ dictum hujusmodi numerus non fuerit realitèr perim-
 “ pletus, tunc præter pœnam perjurii, quam ipsorum
 “ quemlibet hoc casu culpabilem incurrere volumus
 “ ipso facto, facultatem tunc amplius vice illâ ad locum
 “ vel loca vacantem vel vacantia eligendi eis adimimus,
 “ potestatem omnimodam loco seu locis hujusmodi pro
 “ tunc providendi ad episcopum Lincoln. qui pro tem-
 “ pore fuerit, seu, ipso in remotis agente, ad ejus vica-
 “ rium in spiritualibus generalem, seu, sede Lincoln.
 “ vacante, ad custodem spiritualitatis ejusdem trans-
 “ ferentes: in quo casu volumus, quod dictus præpo-
 “ situs et vicepræpositus per literas suas patentes,
 “ aliquo sigillo authentico figillatas, dictum Lincoln.
 “ episcopum, seu, eo agente in remotis, ejus vicarium
 “ in spiritualibus generalem, seu, sede Lincoln. vacante,
 “ custodem spiritualitatis ejusdem, de devolutione hujus-
 “ modi, modo et formâ ejusdem, infra decem dies a
 “ tempore quo eis de eadem devolutione certitudinali-
 “ tèt.

“ tēr. constiterit, certificet sub pœnâ perjurii, quam eos
 “ et eorum utrumque in hâc parte delinquentes, seu de-
 “ linquentem, incurrere volumus ipso factō; jurabunt
 “ autem sic nominati et electi, seu provisi hujusmodi ad
 “ sancta Dei evangelia, antequam in collegium nostrum
 “ regale de Eton. admittantur, realiter sub hac formâ :

“ Ego H. presbyter, in socium perpetuum collegii
 “ beatæ Mariæ de Etonâ nominatus et electus, juro ad
 “ hæc sancta Dei evangelia per me corporaliter tacta,
 “ quod omnia statuta et ordinationes dicti collegii de
 “ Etonâ necnon regale collegium beatæ Mariæ et sancti
 “ Nic. Cantab. concernentia, per Christianissimum ac ex-
 “ cellentissimum principem Henricum sextum, Dei gra-
 “ tiâ, Angliæ et Franciæ regem, collegii regalis prædicti
 “ fundatorem, edita et edenda, ac omnia ac singula in
 “ eisdem contenta, quatenus ipsa me concernunt, secun-
 “ dum planum, literalem, et grammaticalem sensum et
 “ intellectum eorundem, diligenter tenebo et etiam ob-
 “ servabo, et faciam etiam quantum in me fuerit ab
 “ aliis teneri et etiam observari; alioquin pœnas in non
 “ parentes in præmissis, vel eorum aliquo in dicto collegio
 “ regali de Eton. ordinationibus et statutis, inflictas
 “ et etiam ordinatas, aut judicio et arbitrio præpositi,
 “ vel in ejus absentiâ judicio et arbitrio vicepræpositi
 “ ejusdem, virtute statuti nostri inferiùs editi, infligendas,
 “ ordinandas,

“ordinandas, seu etiam arbitrandas subibo, et me
 “humiliter subiturum permitto, juxta omnem vim,
 “formam, et effectum ordinationum et statutorum
 “prædictorum; item si contingat me scire aliqua secreta
 “collegii regalis prædicti, ipsa non revelabo ad
 “extra in damnum, sive præjudicium eorundem; item
 “quod ad dicti collegii regalis de Etonâ meliora-
 “tionem, augmentationem bonorum, terrarum, pos-
 “sessionum, reddituum, et jurium ejusdem conserva-
 “tionem, defensionem, promotionemque, et expedi-
 “tionem negotiorum dicti collegii quorumcunque, ad
 “quemcunque statum, gradum, dignitatem, vel offici-
 “um in posterum devenero, in consiliis, beneficiis, fa-
 “voribus et auxiliis quantum in me fuerit et ad me per-
 “tinuerit, diligenter juvabo, et pro eisdem fideliter
 “laborabo, et usque ad finalem et felicem expedi-
 “tionem negotiorum prædicti collegii juxta posse insta-
 “bo, quamdiu vixero in hoc mundo; item quod non
 “procurabo immutationem, diminutionem vel am-
 “missionem numeri scholarium, presbyterorum aut
 “ministerorum ecclesiæ ipsius collegii præsentibus sta-
 “tutis et ordinationibus limitati contra formam sta-
 “tutorum et ordinationum eorundem, vel ea fieri per-
 “mittam secundum meum posse, aut eisdem consen-
 “tiam

“ tiam quovismodo ; quodque nulla alia statuta, ordina-
“ tiones, interpretationes, mutationes, injunctiones, de-
“ clarationes aut expositiones aut glossas alias præsentibus
“ nostris ordinationibus et statutis, vel qualitercunque vero
“ sensui et intellectui eorundem repugnantes vel repug-
“ nantia, derogantes vel derogantia, contrarias vel con-
“ traria, per quemcunque seu quoscunque, alium vel alios,
“ quam per eundem metuendissimum principem funda-
“ torem predictum fiendas vel fienda, quomodolibet ac-
“ ceptabo, vel ad ea consentiam quovismodo, aut ipsa
“ aliquammodo admittam, nec eisdem parebo ullo modo,
“ nec intendam, nec illis vel eorum aliquo ullo modo
“ utar in collegio vel extra, tacite vel expresse, sed eis
“ et eorum cuilibet contradicam et etiam resistam ex-
“ presse, ipsaque fieri viis et modis omnibus quibus
“ scivero impediam juxta posse ; item quod non ero
“ detractor, susurro, vel faciens obloquia, aut provo-
“ cans invidiam, odium, iram, discordias, contumelias,
“ rixas, vel jurgia, aut spirituales vel præcellentes præ-
“ rogativas nobilitatis generis, aut divitiarum allegans,
“ nec inter focios vel scholares ejusdem collegii de Etonâ
“ patriæ ad patriam, generis ad genus, nobilitatis ad
“ nobilitatem vel ignobilitatem, seu alias qualitercunque
“ comparationes quæ odiosæ sunt in verbo vel in facto,
“ causâ

“ causâ commovendi malitiosè socios, vel scholares,
 “ tacitè vel expressè publicè vel occultè faciam quovis-
 “ modo; item quod nullas conventiculas, conspirationes,
 “ confœderationes seu pactiones aliquas ubicunque in-
 “ fra regnum Angliæ vel extra contra ordinationes vel
 “ statuta dicti collegii de Etonâ concernentia, vel
 “ contra ipsius collegii statum, commodum aut hono-
 “ rem; aut contra præpositum, vicepræpositum, vel
 “ aliquem socium ejusdem collegii illicitè factam, nec
 “ ipsa procurabo, seu permittam ab aliis fieri quantum
 “ in me fuerit, quomodolibet in futurum, nec facien-
 “ tibus ipsa vel ipsorum aliquod præstabo seu dabo
 “ concilium, auxilium vel favorem, aut eisdem scienter
 “ interesse præsumam, nec ipsis consentiam tacitè vel
 “ expressè; item quod non impetrabo literas aut preces
 “ principum, prælatorum, aut aliorum magnatum
 “ quorumcunque, seu alia media fieri procurabo, ut
 “ ad officium præposituræ, vicepræposituræ, seu alia quæ-
 “ cunque officia infra idem collegium per me gerenda,
 “ ullo unquam tempore eligar vel assumar; quodque
 “ fidelis ero, ac etiam diligens in quocunque hujusmodi
 “ officio ad quod me, absque literarum aut precum hujus-
 “ modi impetrationibus, sive modis illicitis, in eodem
 “ collegio eligi et assumi contigerit, illudque cum debite
 “ electus, et sic assumptus fuero, admittam, et pro posse

“ meo fideliter adimplebo; quodque dicto collegio fidelis
“ ero, damna, scandala, vel præjudicia dicti collegii,
“ quatenus in me fuerit, nullatenus faciam nec quo-
“ modolibet fieri sustinebo, sed illa per me et alios,
“ modis et viis quibus potero, impediam; et si impedire
“ ipsa non potero, præposito, vicepræposito, aut bursariis
“ dicti collegii revelabo. Præposito insuper, ac in ejus
“ absentia, vel eo legitimè impedito, vicepræposito, et
“ eis fortassis ex necessariâ et urgenti causâ absentibus,
“ socio seniori tunc præsentî, in licitis et honestis et max-
“ ime in dicti collegii negotiis obediam et assistam, et
“ reverentiam debitam obedienter impendam, moni-
“ tionibusque et injunctionibus et decretis, correctioni-
“ bus et punitionibus quibuscunque, præpositi et vicepræ-
“ positi dicti collegii quorumcunque qui pro tempore
“ fuerint, secundum formam ordinationum et statutorum
“ ejusdem collegii in posterum faciendum, quantum in
“ me fuerit et ad me pertinuerit, parebo humiliter cum
“ effectu; contrarium vero vel repugnans præmissis, in
“ judicio vel extra, tacitè vel expressè non faciam seu
“ fieri procurabo, aut eisdem consentiam quovismodo;
“ item quod de veris et perpetuis sociis presbyteris in
“ dictum *collegium de Etonâ eligendis* et admittendis,
“ *fidele consilium et auxilium*, omni favore postposito,
“ tribuam et impendam, ut de bonis personis, castis,
“ modestis,

“ modestis, honestis, aptis, *juxta formam statutorum*
 “ *prædictorum, provideatur eidem*; item quod non im-
 “ petrabo dispensationem aliquam contra juramenta mea
 “ prædicta, vel contra ordinationes et statuta de quibus
 “ permittitur, aut ipsorum aliquod, nec dispensationem
 “ hujusmodi per me, alium vel alios, publicè vel occultè
 “ impetrari, aut fieri procurabo, directè vel indirectè;
 “ et si fortè aliquam dispensationem hujusmodi impetrari
 “ vel gratis offerri contigerit vel concedi, cujuscunque
 “ fuerit auctoritate, seu si generalitèr vel specialitèr aut
 “ aliàs sub quacunque formâ verborum concessâ, ipsâ
 “ non utar, nec eisdem consentiam quovismodo: sic me
 “ Deus adjuvet, et hæc sancta Dei evangelia. Et si con-
 “ tingat in posterum me propter contemptum, rebel-
 “ lionem, inobedientiam, malos mores, vel alia mea dé-
 “ merita, seu propter causas in præsentibus ordinationi-
 “ bus et statutis contentas, per præpositum vel vicepræ-
 “ positum, juxta formam ordinationum et statutorum
 “ dictorum, corrigi vel puniri, aut alias a dicto collegio
 “ ejici, expelli, privari, excludi, vel etiam amoveri, ex
 “ certâ meâ scientia, purè, spontè, simpliciter et abso-
 “ lutè, omni actioni occasione correctionis, vel puni-
 “ tionis, privationis, exclusionis, expulsionis seu amo-
 “ tionis hujusmodi, contra præpositum aut alios dicti col-

“ legii focios qui pro tempore fuerint, conjunctim vel di-
“ visim, quomodolibet instituendæ, appellationique et
“ querelæ meâ parte fiendis, ac quarumcunque literarum
“ impetrationi, precibus principum, prælatorum, pro-
“ cerum, magnatum, et aliorum quorumcunque, nec-
“ non et quibuscunque curiæ ecclesiasticæ vel sæcularis,
“ ac omnibus remediis juris et facti, per quos aut quæ
“ petere possem me reconciliari, vel in integrum restitui,
“ contra præmissa, quantumcunque alias mihi probitatis
“ et vitæ merita suffragentur, in vim pacti renuntio in
“ his scriptis. Volumus quod de juramento prædicto
“ fiat statim instrumentum publicum, signo et subscrip-
“ tione alicujus notarii publici munitum, ipsius jura-
“ menti tenorem, diem, formam, ac nomen et cognomen,
“ ac cujus comitatûs et diœcesis existat continens sic
“ jurantis, quod penes præpositum dicti collegii perpe-
“ tuò remaneat sub custodiâ diligenti; quem sic ad-
“ missum et juratum verum et perpetuum focium presby-
“ terum ipsius nostri collegii volumus nuncupari.”

SECTION THE SECOND.

Of the Consistency of this Practice with the Statute.

THE direction of the statute is, we see, to this effect;
 That upon a vacancy (*i. e.* every vacancy) in the number of fellows, the provost and fellows shall meet in the chapel as soon as they can conveniently, to make provision for a new fellow; and after having taken an *oath* to elect such a person as, they are persuaded, is well and *notably disposed* to promote the credit, *service and interest of the college*, shall, uninfluenced by love, hatred, favour, partiality, or any bad affection of any kind, nominate and elect, in the place of him that is wanting, another able and sufficient person:

1. Of the fellows of our King's College, Cambridge, or
2. Of those who have been fellows, or
3. Of the priests who officiate for hire in the said college of Eton, or
4. Of such as have done so; or, *if none of these persons can be had, then, but not till then,*
5. From any *other colleges or places, at the discretion of the electors.*

The

- The original thus: "Alium loco deficientis focii,
 " 1. De fociiis collegii nostri regalis Cantabrigiæ, vel
 " 2. De iis qui prius fuerant in eodem, vel
 " 3. De presbyteris conductitiis, vel
 " 4. De iis qui prius fuerant, *aut aliàs,*
 " 5. De *collegiis vel locis aliis juxta ipsorum discre-*
tionem."

Now we have but two possible ways of considering this statute; either, 1st, as a trust under certain limitations and restrictions: or, 2dly, as a trust absolutely discretionary and unconditional: it either ties down the electors to King's College, so long as that college can supply us with men of sufficient abilities to come up to the qualification it requires; or, it leaves them at full liberty *from the first* to make their choice *in every instance* from any other college or place, without regard to any university or college*.

It either allows an absolute, unlimited, unrestrained discretion; or it allows *no discretion at all*, till the fellows of King's College, and after them the hired ministers of Eton College, *are not to be had, or not worth having.*

* Note, Though by *places* here are probably meant the halls in either university, yet the letter of the statute would be equally complied with, if the candidate had been educated at Daventry or Tewkesbury, provided that he had taken a master's degree at Glasgow or Aberdeen.

I am

I am not now going to decide upon this point; nor to favour either side of a question, which, taken either way, and allowed to be as you would have it, will give no sort of justification to the late mode of election; that practice having been incontrovertibly wrong, whichever of these expositions we may suppose to be right.

For example: If the fellows of King's College have only a common claim with the members of any other college, or with persons taken from any other place who never have been admitted into any college (for the *discretion*, after it begins to operate, extends itself to this amazing length); let me ask by what authority are the electors restrained to *King's College alone* in the *five first turns* out of *barely seven*?

If again the statute requires that these men of King's shall have the preference in *every case, without specifying any*; I must ask once more, by what authority are all others preferred to them in the *remaining two*?

Is it not obvious to observe, that in the first instance the customary method of proceeding allowed the electors too little latitude? in the second it allowed them too much?

If it be an *open* election by the statute, why is there any *restraint* from any other quarter? If it be a *restrained* one, why is there any *licence* from that restraint?

IF

If it be really in the favour of this particular college, the members of it are evidently *injured twice* out of seven times: if it be not in their favour, some deserving persons who offer from other places may *suffer five times* in the same number!



SECTION THE THIRD.

Of the true Meaning of the Statute.

IT has appeared then that the long-continued practice of Eton College in the election of their fellows was absolutely wrong, without determining which of these expositions of the statute is the true one.

If we can find out the real meaning of the statute, we shall have no difficulty in discovering what ought to be the constant invariable practice of the society on every vacancy—And this it will cost us little trouble to do; for in the *end and conclusion of all the statutes*, we have an express direction, to admit of no interpretation of any part of them, however it may seem to favour any point in question, unless it be the *first and most obvious sense* according

according to the *plain, literal*, and grammatical construction of the place. And if any passage seem to admit of two different interpretations, then the *intention of the founder* in the *foundation of his two colleges* must be the key to lead us to the true one.

From these two principles it would be easy to deduce an unanswerable demonstration of the exclusive right of the King's College fellows, in all cases; but the judicious prelate, on whose determination the Alien Claim is *supposed to be grounded*, has made this process absolutely unnecessary, by expressly allowing the statutable preference of King's College, and even *grounding his determination upon that concession*.

I shall proceed, therefore, to see how the practice of electing Aliens accords with that determination, which was made by archbishop Laud, in his Grace's metropolitical visitation, upon a complaint made by the provost and fellows of King's College, Cambridge, after a full hearing of council for both parties.

Before I insert the decree, it may be not improper to lay before you the petition of the provost and fellows of King's College, which gave rise to it, and will be on that account a proper introduction to it.

D

Archiepisc.

Archiepisc. Cant.
Guil. Laud, 2.

Anno Chrifci,
1634.

Reg. Angl.
Carol. I. 10.

The humble Petition of the Provost and Fellows of
King's College, Cambridge.

Sheweth,

That whereas your Majesty's royal predecessor Henry the Sixth, of blessed memory, hath erected two colleges, the one at Cambridge, the other at Eaton (and transmitted them by the letter of their several statutes to your Majesty's sovereign protection, as to their living founder) unto both which he gave *names, revenues and immunities alike, intending one as a nursery for the other,* and commanded that there should *ever be a mutual tie of love and amity between them,* which your Majesty's humble petitioners, for their parts have always been most careful to observe; but do conceive *themselves to have received much wrong from their sister foundation in many things,* but MOST APPARENTLY in the CHOICE OF THEIR FELLOWS.

And whereas at this present the most reverend father in God the lord archbishop of Canterbury's Grace hath
begun

begun his metropolitical vifitation of that college; may it please your moft gracious *Majefty*, in tender confideration of the premifes, to RECOMMEND THE EXAMINATION AND EXPOSITION OF THEIR STATUTES, and final determination of all other caufes as may *concern the peace and amity of both* focieties, to the faid moft reverend Father, that fo fome *binding order* may be fettled in this his Grace's vifitation, for the *future good and peace of both the faid colleges*, according to their *Founder's moft* ROYAL AND PIOUS INTENTION. And your Majefty's poor *petitioners*, as in duty bound, fhall ever pray, &c.

S. Collins, Provost,	Tho. Crouch,	Rich. Griffith,
Hen. Bing, V. Prov.	Grindel Keaf,	Will. Bore,
Tho. Rowe,	H. Edmonds,	Will. Fairbrother,
Cha. Goad, B. D.	Hen. Kent,	Isaac Oliver,
J. Clufte,	Rich. Daye,	Matthew Day,
Rich. Peters,	John Jones,	George Darfcomb,
K. Winterton,	Charles Nevil,	James Kedies,
Geo. Goad,	Robert Newman,	James Briggs,
Nich. Hobart,	Tho. Page,	Henry Pierce,
Sam. Wootton,	Rich. Jaxon,	Tho. Gouge,
Edw. Havtrej,	John Beal,	John Waller,
Geo. Hale,	John Auftye,	Tho. Gearinge.
John Wotton,	Edm. Wardwicke,	

At the Court at Whitehall, 30th of November,
MDCXXXIV.

His Majesty's pleasure is, That the Lord Archbishop of Canterbury his Grace shall, in this his metropolitical visitation, EXAMINE AND EXPOUND ALL THOSE STATUTES concerning which any DOUBTS MAY ARISE BETWEEN THE TWO COLLEGES, to hinder THEIR MUTUAL TIES AND BOND, which, BEING ESTABLISHED BY HIS MAJESTY'S PREDECESSORS, his Majesty is careful to preserve: and also, that his Grace shall finally determine, by some binding order, all other causes which may concern the PEACE AND AMITY OF BOTH SOCIETIES, in such good manner as his Grace shall think FIT AND AGREEABLE TO JUSTICE.

FRAN. WINDEBANK.

Let us now attend to the Decree.

“ Archiepiscopi

“ Archiepiscopi Cantuariensis literæ præposito et fociis
 “ collegii Etonensis, de numero fociorum.

“ Ex. Reg. Laud. folio 258.

“ Gulielmus providentiâ divinâ Cant. Archiepiscopus,
 “ totius Angliæ primas et metropolitanus, dilectis in
 “ Christo præposito et fociis collegii de Etonâ in diœcesi
 “ Lincoln. salutem et gratiam.

“ In visitatione nostrâ metropolitica diœc. Lincoln.
 “ et collegii vestri, nuper proposita fuit coram nobis que-
 “ rela ex parte quorundam fociorum collegii regalis in
 “ academiâ Cantabrigiensi, quod cum communis funda-
 “ tor utriusque collegii prædicti Henricus sextus piæ
 “ memoriæ, quondam rex Angliæ, collegium vestrum de
 “ Etonâ de decem fociis fundaverit, et in loca vacantia
 “ fociorum collegii vestri PRIMO ET ANTE OMNES ALIOS
 “ ordinaverit eligi focios collegii regalis, vel eos qui prius
 “ fuerint in eodem et ex causis honestis et licitis recessse-
 “ rint ab ipso, SI QUI TALES INVENTI FUERINT HABILES ET
 “ SUFFICIENTES; vos tamen, contra statuta collegii vestri,
 “ septem focios tantum jam diu habueritis et in præsentem
 “ habetis, et in loca vacantia fociorum collegii vestri
 “ sæpius eligatis ALIOS de aliis collegiis vel locis, AD

“ ARBITRIUM.

“ ARBITRIUM VESTRUM, licet habiles et sufficientes in re-
 “ gali collegio prædicto reperiantur: nos verò, auditis iis
 “ omnibus quæ coram nobis utrinque proposita fuerunt,
 “ post maturam deliberationem, de perimplendo numero
 “ decem sociorum collegii vestri, in præsentī aliquid de-
 “ cernere noluimus, cum nobis constat collegium ves-
 “ trum ab Edwardo quarto quondam rege Angliæ im-
 “ mediato fundatoris vestri successore fuisse dissolutum,
 “ et ab eodem deinceps (sed redditibus ejusdem multum
 “ imminutis) restitutum; et ab eo tempore citra nume-
 “ rum sociorum vestrorum nunquam septenarium exti-
 “ tisse; adeoque noluimus consuetudinem collegii vestri
 “ in hâc re ex verisimilibus causis tamdiu receptam su-
 “ bitò immutare.

“ Cæterum cum *ex statutis collegii vestri nobis etiam*
 “ *constet*; primo, collegium vestrum esse originem et
 “ seminarium collegii regalis; et, secundo, fundatorem
 “ vestrum communem desiderâsse ut *inter utrumque col-*
 “ *legium suum* arctissima conjunctio, consociatio, et cha-
 “ ritas inperpetuum intercederit; et, tertio, in *electione so-*
 “ *ciorum collegi vestri jusserit primam et præcipuam ra-*
 “ *tionem habendam esse sociorum regalis collegii Canta-*
 “ *brigiæ*, vel eorum qui prius fuerint in eodem et ex
 “ causis licitis et honestis recesserint, atque, quarto, *ad*
 “ *loca*

“ *loca vacantia sociorum collegii sanctæ Mariæ Winto-*
 “ *niensis* (ad cuius exemplum collegium vestrum fun-
 “ datum est) *socii Collegii Novi Oxoniæ tantum et nulli*
 “ *ex aliis collegiis aut sociis electi fuerint* a fundatione
 “ ejusdem: nos, ad *promovendam fundatoris vestri volun-*
 “ *tatem, et desiderium in conciliandâ conjunctione et chari-*
 “ *tate inter utrumque collegium suum prædictum, ordi-*
 “ *namus et decernimus, Quod ex septem sociis collegii*
 “ *vestri continuo QUINQUE AD MINIMUM eligantur inper-*
 “ *petuum; primo, de sociis collegii regalis prædicti; vel,*
 “ *secundo, de eis qui prius fuerint in eodem et ex causis*
 “ *licitis et honestis recesserint ab eodem, si qui tales*
 “ *habiles et sufficientes reperti fuerint; et, tertio, quod*
 “ *nulli* imposterum eligentur per vos aut successores
 “ vestros *ex aliis collegiis aut locis, quandiu numerus*
 “ *quinque sociorum vestrorum ex sociis collegii regalis*
 “ *prædicti non fuerit perimpletus; mandantes et injun-*
 “ *gentes hanc nostram ordinationem et decretum a vobis*
 “ *et successoribus vestris in perpetuum observari.*

“ In cuius rei testimonium, figillum nostrum archiepif-
 “ copale præsentibus apponi iussimus.

“ Dat. in manerio nostro de Lambehthe, undecimo
 “ die mensis Martii, anno Domini (stylo Angliæ)
 “ MDCXXXV, et translationis nostræ anno quarto.”

Extract.

Extract. ex vol. 4^o Conciliorum, p. 541. ab ann. 1644. ad ann. 1717. Londini.

The following letter from his Grace, being posterior to the decree, will shew more fully (if possible) the Archbishop's settled opinion in favour of King's College.

The Archbishop's letter to the Provost and Fellows of Eton College, about the number of Fellows. Reg. Laud, folio 259, a.

Salutem in Christo.

After my hearty commendations, &c. You cannot but remember, that after my metropolitical visitation of the college at Eton was begun, there was delivered unto me a petition from King's College, Cambridge, and another to his sacred Majesty, both *concerning certain rights to the fellowships*, as they pretended; and the petition to his Majesty was after sent unto me, with a reference under Secretary Windebank's hand, requiring me to take their cause into consideration, and to *do them that justice which upon due deliberation I should find did belong to them and their cause.*

Thereupon

Thereupon *I had divers times cognizance of this cause in the presence of some both of yours and their societies, and heard at large both your and their counsel; that, by reason of the shortness of my visitation, being unwilling to hold it much longer than the ordinary time of six months, and because of my other many and great occasions not suffering me to attend that business wholly, I was constrained to reserve this and all such businesses as were then depending before me, in the relaxation of my visitation aforesaid, to such other farther and fit time as I might have to end them.*

And, having now maturely considered of the aforesaid petition of King's College, with all incidents thereto belonging, and of all such answers as you the provost and fellows of Eaton have given, I have now at last made my decision, with an injunction of obedience in time to come, and have sent it herewith under my archiepiscopal seal; requiring you, that it be registered at the end of your Statute Book, and observed in all future elections of fellows into your society, that so, these two great bodies, which had one and the same royal Founder, may, according to his will and frequent desires in your and their Statute Books, grow up into a nearer relation and

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greater

greater amity one to and with the other. Which God grant! So, with my love remembred to you, I leave you all to God's blessing and protection; and rest,

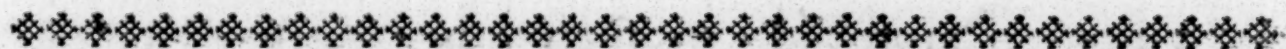
Lambehthe,

Your very loving friend,

Martii 15,

MDCXXXVI.

W. CANT.



SECTION THE FOURTH.

Of Archbishop Laud's determination, and the consistency of the present practice of Eton College with that determination.

THE injunction, we see, sets forth, "That whereas
 " complaint had been made to us, by some of
 " the fellows of King's College, in the University of
 " Cambridge, That since the common Founder of the
 " two colleges had ordained that the vacant fellowships
 " of Eton should be supplied *first and in preference to*
 " *all*

“ *all other persons* out of the fellows of King's College:
 “ or, of those who had been fellows of that college,
 “ while proper persons are to be had within that de-
 “ scription: and that, notwithstanding this, the provost
 “ and fellows of Eton, *in opposition to this statute*, do
 “ frequently elect *other persons from other places* into
 “ their vacant fellowships, when persons properly qua-
 “ lified may be had from King's College: The fellows
 “ of the said college have made their humble petition
 “ to us, that we would be pleased to decree, that for
 “ the future the vacant fellowships in Eton College
 “ should be supplied from King's College *only*, so long
 “ as proper persons are to be found in that college. We
 “ having heard every thing which could be alledged by
 “ either party; and *seeing clearly from your statutes*
 “ that the college of Eton is the source and seminary of
 “ King's College, and that it was the *earnest desire* of
 “ Henry the Sixth, the common Founder of each college,
 “ to have the *strictest concord, union and harmony sub-*
 “ *sist between them both*, and that he has *expressly ordered*,
 “ in his statute of election of the fellows of Eton, that
 “ the *first and principal* respect should be paid to the
 “ *actual* fellows of King's, or to those who had been
 “ fellows: and reflecting farther, that the fellows of

“ New College in Oxford *only*, and *no other* persons
 “ from *any other place or college*, have been elected into
 “ the college of St. Marie at Winchester (which was
 “ the *model* from whence the *plan of Eton College* was
 “ taken) upon *any vacancy* in the fellowships *there from*
 “ *its first foundation* : We, in order to *promote the in-*
 “ *tention and wish of your Founder*, by establishing the
 “ *natural connexion and amity* between the sister foun-
 “ dations, do order and determine, That from this time
 “ for ever *five at least* of your seven fellows be chosen out
 “ of those who are, or those who have been, fellows of
 “ King’s College, if proper persons be to be had within
 “ that description ; and that *no other* persons whatever
 “ shall hereafter be elected by you or your successors
 “ from *any other* places whatever *till the number of five*
 “ *fellows* from King’s College be complete and full.”

This decree or ordinance of the Archbishop was con-
 firmed by Charles the Second * under the broad seal of
 England ; in whose letters patent, after reciting the
 archiepiscopal mandate, the royal confirmation of it is
 introduced in these words, “ And as we are fully con-
 “ vinced that this decree or ordinance was made by the
 “ Archbishop, not only from *reasonable* motives, but also

* This is contained in the ratification inserted in the Appendix.

“ from

ON THE ARCHBISHOP'S DETERMINATION. 29

“ from a thorough understanding of the several *statutes*
“ *and usages of Eton College relative to the election of their*
“ *fellows*, and after mature deliberation had concerning
“ the *due and statutable election of the same.*”

It was again ratified * in the reign of James the Second, by letters under the great seal ; which ratification, after the recital of the archiepiscopal and the royal mandates, is ushered in by this preface : “ That the
“ whole matter in question might be more fully
“ explained and understood, we have referred it to our
“ trusty and well-beloved counsellor George Lord
“ Jeffreys, our Chancellor of England, who, after hearing counsel on both sides, and having the allegations
“ of both parties fully discussed relative to the point,
“ has found, That the determination and decree of the
“ late Archbishop of Canterbury, and the letters patent
“ of our dearly beloved Brother, are, as to the matter
“ contained in them, not only beneficial and agreeable
“ to the good order and government *of both colleges*, but
“ also *entirely conformable to the statutes of Eton College*
“ *foundation*, and *to the real intention of its pious*
“ *Founder.*”

* Vide in Appendix.

And

And the Archbishop's sentiment is not only to be inferred and collected from the tenor of his mandate; but is most clearly expressed by himself, in some propositions made by his Grace to the learned counsel of both the parties before the day of hearing, and in the letter inserted above, and written after the decision.

P. 2. "Concerning the choice of fellows (says his Grace) from King's College to Eaton, I am clear of judgement, as I now stand advised, that the *statutes of Eton* do require it should be so. And I should make little doubt of any thing in that particular, did I not find, that many years passed from the very Founder's time, before any fellow (for aught appears) was ever chosen out of King's College into Eaton. The contemporaneous exposition and the practice seem to me to go quite cross to the statute."

The Archbishop has not a doubt about the meaning of the statute. His Grace is only concerned that the practice has contradicted it. And where this is the case, we have the express authority of the Founder, that no custom, how early soever it may have obtained, how long soever it may have continued, can have *any weight* against the plain, literal, and grammatical *meaning of the statute*. And indeed his Grace's decree, which was subsequent

ON THE ARCHBISHOP'S DETERMINATION. 31

quent to this reflexion, is an unanswerable proof that this doubt was over-ruled by the weight of evidence on the other side.

The decree extends at least to five out of seven, and *the reasons upon which it is grounded extend equally to the remaining two.* On *what authority* then, I would be glad to know, did the *election of the two aliens* depend? Not on the Archbishop's, who only decrees that no such shall be thought of till the statute has been punctually observed in five instances at least out of seven: if, after that, you choose to break it in the two other, you *do so upon your own suggestion*, and at your peril, *without the least warrant from the archiepiscopal mandate.* Every reason urged by his Grace for choosing the five fellows according to the statute *is as strong for* choosing the sixth by the same rule as the fifth, and the seventh as the sixth. For if Eton College being a seminary, and the origin of King's, be *at any time* a reason for choosing the fellows of the latter into the vacancies in the former, it is so *at all times.* If the Founder's desire to have the strictest harmony kept up between his two colleges be *ever* an argument for transplanting the members of one into the other, it is an argument *always* for doing it. If the express injunction of the statute, that the first and principal regard shall be had in *elections*

to

to the fellows of King's, be cogent in *any one* opening, it is *not less so in any other*. If Winchester and New College, Oxford, be the model of Eton and King's College, Cambridge; and if New College men and no other have universally supplied the deficiencies in the fellowships of Winchester College; what shadow of a pretence can there be, after following this pattern in *five* turns, to depart from it in *any other*?

These are the several reasons which are the groundwork of his Grace's determination; and these are reasons which are conclusive in *all* cases, or in *none*. They are statutable reasons. One of them is the statute itself; and the rest are the motives by which the Founder was induced to make the statute such as it is. The Archbishop was too wise, to think of making new statutes; he knew he was precluded from that power expressly in the conclusion of them; his business was, to *expound and confirm* the old ones: and that he has done effectually, by overturning essentially the cause which made their subversion of so long date, *the majority of Alien Fellows*. To have done less; would have been insufficient; to have done more, was unnecessary. By this decree the power was vested in those hands which were obliged by *every tie* to regard the reasons upon which it was founded; as it was taken out of those whose usurped claim made it necessary

necessary for them to suppress every argument which held up the statute against the validity of their possession.

One can scarce conceive how this point could have been settled with more address, or with more equity, than it is done ; with more security to the injured party, and with less offence to the other ; than, after the admission of a clear majority in any supposable case, to leave as it were a door open, which it was not only in their power, but which he had shewn them it was *in every light their duty to keep for ever shut*. For it is impossible to suppose that a person of the Archbishop's *sagacity*, and I will say *integrity*, could ever dream of supplying the *two last* deficiencies, upon *any other qualifications* than those which he had assigned to *the five first*, and which he knew claimed the *same respect in one* vacancy, as *in another*. No logic could ever draw such a conclusion from such premises. In this case, every argument he had so well urged would have turned against himself, and his determination would have been the most apparent inconsistency, as it would have been no other than a decree to act upon the *best reasons* in the world in the *first* instances, and to turn your back upon them in *the last*.

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34 THE ALIEN CLAIM NOT FOUNDED

It having appeared clearly from the preceding short observations, that the *Alien Claim* has *no foundation in the statute* :

And farther, that as the decree acknowledges and adopts, and proceeds upon, the plain, literal, and grammatical sense of the statute; it *cannot have possibly any more ground in the latter* than it has in the former :

And there being *no other* conceivable *authority* on which it can stand, but that of the Founder or his deputed expositor ; it must follow, in the last place, That the said claim of the Aliens does NOT REST UPON ANY WARRANTABLE FOUNDATION AT ALL, which was the point these observations were intended to evince.

A P P E N D I X.

To the King's most excellent Majesty.

The humble Petition of the Provost and Fellows of the
King's College, in Cambridge;

Humbly sheweth,

THAT the provost and fellows of this Society did present a petition to your Majesty's royal father of blessed memory, that he would be pleased to recommend the final determination of all differences, concerning the choice of fellows into Eton College, unto the most reverend Father in God William then Lord Archbishop of Canterbury, who at that time had begun his metropolitical visitation of that college: That his Grace did thereupon, agreeably to the mind of our Founder, and for the mutual good correspondence of the two sister colleges, order and decree, and ratify the same under his seal archiepiscopal, that ever for the future, five of the seven fellows of that college should be chosen out of such as either actually were fellows of the

F 2

King's

King's College in Cambridge, or had been so and receded for lawful and honest causes; which decree was not observed, the troubles of the nation breaking forth not long after.

That your sacred Majesty has been pleased, since your happy restoration, to confirm the said decree to your petitioners, and to pass it unto them by letters patent under the broad seal of this kingdom, in which patent the premises are at large recited. These good intentions have been traversed by prevalency with your Majesty, in behalf of such as neither were, nor had been, members of the society: so that we are in danger of being deprived of so great a benefit and encouragement to our studies, if not graciously relieved by your Majesty.

May it therefore please your most excellent Majesty, to secure your petitioners for the time to come in the enjoyment of so estimable a privilege, by such means as to your princely wisdom and piety shall seem most fit: and your petitioners, as in duty bound, shall ever pray.

CHARLES

CHARLES R.

IT is our will and pleasure, upon the reading and considering of this petition, That the decree of William late Lord Archbishop of Canterbury, therein mentioned, together with the letters patent confirming the same, be for the future inviolably observed. And we do hereby strictly charge and command the provost and fellows of our royal college of Eton, that now are, or hereafter may be, that, notwithstanding any mandatory letters whatsoever, either already granted (which we do hereby revoke), or that hereafter shall be granted by us, they proceed to choose into the fellowships of the said college of Eton such of the fellows of King's College in Cambridge as are qualified for the same by the statutes of the said college, and the directions of our letters patent. And our farther pleasure is, that this petition and the answer to it be shewed to our two Secretaries of State, and entered into their books; and that a copy of it be also entered into the books
of

38 THE ALIEN CLAIM NOT FOUNDED

of the statutes of our two royal foundations of Eton
and King's.

Given at our Court at Whitehall, the 26th
day of Nov. 1679, in the 31st year of
our reign.

By his Majesty's command,

H. C.

JACO-

J A C O B U S II.

D. G.

S.

CUM reverend. in Deo pater Gulielmus nuper Cant. archiep. per literas suas sub sigillo suo archiepiscopali confect. gerend. dat. xi^{mo} die Mart. A. D. 1636, in visitatione sua metropolitana diœces. Linc. et coll. Etonensis in eadem diœc. super querelam coram eo propositam ex parte quorundam fociorum coll. Beatæ M. et S. Nicoli Cant. per nomen fociorum coll. reg. in academ. Cant. quod cum communis fundator utriusque coll. Hen. sex. piæ memoriæ quond. rex Angliæ dict. coll. de Etonâ fundâisset, et in loca vacantia fociorum coll. ejusdem primo et ante omnes alios ordinâisset eligi focios coll. reg. vel eos qui prius fuissent in eodem, et ex causis licitis et honestis recessissent ab ipso, si qui tales inventi forent habiles et sufficientes: prædicti tamen focii coll. Etonensis contra statuta ejusdem coll. in loca vacantia fociorum elegissent alios de aliis collegiis vel locis ad arbitrium suum, licet habiles et sufficientes in coll. reg. prædict. inve-

38 THE ALIEN CLAIM NOT FOUNDED

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invenirentur, und. præfati focii coll. reg. Cant. a prædicto archiep. humiliter petivissent, ut vellet ordinare loca vacantia fociorum coll. Eton. prædicti ex fociis coll. reg. prædicti, et non alibi supplenda esse, si habiles et sufficientes in coll. reg. prædict. reperirentur: prædict. vero archiep. auditis omnibus quæ coram ipso proposita fuissent, post maturam deliberationem decrevit, quod cum ex statutis prædict. coll. Eton. constabat, coll. illud originem esse et seminarium coll. reg. de Cant. et fundatorem illius communem desiderasse, ut inter utrumque coll. suum arctissima communicatio, consociatio, et charitas in perpetuum intercederent, et in electione fociorum coll. Eton. jussisset primam et præcipuam rationem habendam fore fociorum coll. reg. Cant. vel eorum qui prius fuissent in eodem, et ex causis honestis et licitis ab ipso recessissent; et quemadmodum ad loca vacantia coll. S. Mariæ Wintoniensis, ad cujus exemplum coll. Eton. fundatum fuisset, focii coll. novi Oxon. tantum, et nulli alii ex alio coll. aut locis, electi fuissent a fundatore ejusdem: ad promovend. fundatoris dicti coll. Eton. voluntatem et desiderium, in concilianda communicatione et charitate inter utrumque coll. suum prædict. ordinaverit et decreverit, quod ex septem fociis coll. Eton. continuò quinque ad minimum eligerentur in perpetuum de fociis prædicti coll. reg. vel de iis qui prius fuissent
in

in eod. et ex causis honestis ac licitis recessissent ab eod. si qui tales habiles et sufficientes reperti forent; et quod nulli in posterum eligerentur per præfatum præp. et socios coll. Eton. prædicti, vel successores eorum ex aliis collegiis aut locis in socios coll. illius, quamdiu numerus quinque sociorum ejusd. coll. ex sociis coll. reg. prædict. non foret perimpletus; mandans et injungens ordinationem et decretum illud suum a præfato præp. et sociis coll. Eton prædicti, et eorum successoribus in perpetuum observari, prout per decretum dicti archiep. plenius liquet et apparet.

Cumque præchariss. frater noster Carolus II. beatæ memoriæ nuper rex Angliæ, per literas suas patentes, sub magno sigillo suo Angliæ confect. gerend. dat. 10^{mo} die Novembris anno regni sui 22^o, recitans ordinationem sive decretum archiep. præd.; quodque SATIS CONSTABAT ORDINATIONEM SIVE DECRETUM POST MATURAM DELIBERATIONEM inde habit. per præf. archiep. sic, ut præfertur, factum fuisse et provisum pro DEBITA ELECTIONE SOCIORUM secund. consuetudinem et STAT. PRÆDICT.: et hinc præpositus et socii coll. Beatæ Mariæ et S. Nicolai Cant. eidem nuper regi, ad quem maximè et precipuè tunc spectabat felicitati collegiorum præd. prospicere, BONOQUE RIGIMINI EORUNDEM consulere, SECUND. VERAM IN-

TENTIONEM ET VOLUNTATEM FUNDATORIS PRÆF. NUPER REGIS HEN. SEXTI humillimè supplicâssent, ut tam perpetuæ firmitati et habilitati prædict. ordinationis et decreti, quàm executioni ejusd. de gratia et potestate sua regia providere vellet, pro se, hæredibus et successoribus suis, quantum in se fuit, præd. ordinationem sive decretum per præf. archiep. modo et forma prædict. edit. et provis. omniaque et singula prærecitat. illis decretalibus specificata et contenta ratificaverit et confirmaverit.

Et ulterius præf. nuper frater noster per easd. literas suas patent. concesserit et ordinaverit, quod ex septem fociis prædict. coll. Beatæ Mariæ de Etonâ continuò quinque ad minimum eligerentur in perpetuum de fociis coll. Beatæ Mariæ et S. Nicolai Cant. prædict. vel ex iis qui prius fuerint in eodem et ex causis honestis et licitis recessissent ab eodem, si qui tales habiles et sufficientes reperti fuerint; et quod nulli in posterum eligerentur per præp. et socios coll. Beatæ Mariæ de Eton. quamdiu numerus quinque sociorum ejusd. coll. ex fociis coll. Beatæ Mariæ et S. Nicolai Cant. non fuerit perimpletus. Quæ quidem omnia et singula per ipsum et præf. archiep. concessa et ordinata, modo et forma prædict. per præf. præp. et socios dicti coll. sui Beatæ Mariæ de Etonâ, et successores suos, idem nuper frater noster perpetuis futuris temporibus observari voluit, et imperavit per dictas
literas

litteras suas patent. prout per easdem etiam plenius liquet et apparet.

Cumque modo præp. et focii prædict. coll. reg. Cant. per petitionem suam nobis humillimè supplicaverunt, quod nos prædict. privilegium, in præd. ordinatione sive decreto et literis patentibus contentum, concess. sive confirmat. ipsis præfatis præp. et fociis ejusd. coll. et successoribus suis ratificare et confirmare gratiosè dignaremur; petitionis illius examinationem ex cura nostra regali PRO AMBOBUS COLL. PRÆDICT. EX REGIA FUNDATIONE EXISTENT. AC UT TOTA MATERIA IN QUÆSTIONE PLENIUS EXAMINARETUR, ET INTELLIGERETUR, prædilecto et perq. fidei Cancellario nostro Georgio dom. Jeffery Cancellario Angliæ retulimus; qui, CONSILIO EX UTRAQUE PARTE AUDITO, et ALLEGATIONIBUS AMBARUM PARTIUM MATERIAM PRÆDICTAM TANGENTIBUS PLENARIE EXAMINATIS, invenit determinationem et decretum præf. nuper archiep. Cant. necnon dictas litteras patent. præcharissimi fratris nostri, quoad materiam præd. in easd. content. non solum beneficiale et consonum fore bono ordini et regimini utriusque coll. verum etiam CONSENTANEUM TAM STATUTIS FUNDATIONIS COLL. ETON. PRÆDICTI, QUAM VERÆ INTENTIONI PII FUNDATORIS EJUSDEM.

Sciatis igitur, quod nos humillimam petitionem præf. præp. et fociorum coll. Beatæ Mariæ et S. Nicolai Cant.

de gratia nostra speciali, ac ex certa scientia et mero motu nostris, ratificavimus et confirmavimus, ac pro nobis, hæredibus et successoribus nostris, quantum in nobis est, prædict. ordinationem sive decretum per præfatum nuper archiep. Cantuar. modo et forma prædict. edit. et provis. necnon præd. literas patentes præcharissimi nuper fratris nostri, omniaque et singula in eisdem contenta et specificata, aut perinde concessa vel ordinata ratificamus et confirmamus per præsentēs.

Et ulterius de uberiori gratia et ex potestate nostra regali volumus, ac per præsentēs pro nobis hæredibus et successoribus nostris firmiter injungend. præcipimus et mandamus, quod præf. præp. et socii coll. nostri Eton. prædict. et successores sui de cætero in perpetuum præfat. ordinationem sive decretum, et literas patent. prædictas in cunctis electionibus suis sociorum coll. Eton. prædict. inviolabiliter observabunt et persequentur, aliquo in contrarium non obstante; et non obstante non vera seu non plena recitatione prædictar. literarum patent. præcharissimi nuper fratris nostri, aut ordinationis sive decreti per præf. archiep. sic. ut præfertur, confect. aut alicujus clausulæ, materie vel rei in eisdem, vel eorum altero significat. vel content. et non obstante mala nominatione coll. prædict. vel

ON THE ARCHBISHOP'S DETERMINATION. 45

vel eorum alterius, aut aliqua incertitudine, vel imperfectione in his præsentibus; vel aliqua alia re, causa, vel materia quacunque non obstante.

In cujus rei testimonium, has literas nostras fieri fecimus patentes.

Teste meipso, apud Westmonaster. 24^o die
Februarii, Anno regni nostri secundo.

Per breve de privato sigillo,

PIGOTT.

F I N I S.



E R R A T A.

			<i>for</i>		<i>read</i>
Page 2.	lin.	penult.	contigerint	—	contigerit.
4.	4.		artibus	—	in artibus.
11.	4.		permittitur	—	præmittitur.
22.	20.		intercederit	—	intercederet.
23.	4.		fociis	—	locis.
26.	6.		present	—	late. In title of Sec. 4.
32.	20.		Alien fellows	—	Aliens.

Periodical Publications
Europe, Asia, Africa, America
London, 1775

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to the Printer of The St. J. CHRONICLE
Dux, 1775, 1776, 1777.

Mr. Baldwin.
V E R Y soon who cannot, like James
Twitcher's atheistical and bawdy Chaplain
dicule his Gbd, insult his King, laugh at Ho-
nor, Virtue, Patriotism, will reflect with Horro-
r on he reads, that the Lord Mayor of the Cit-
y of London, a Member of Parliament, and an Al-
derman and Representative of this City, are sen-
tenced to the Tower, under the Reign of the
most mild, gentle, and constitutional Prince that
ever sat upon the Throne of these Kingdoms.—
When Men of the highest Rank and Dignity are
found in Arms, or acting in open Defiance of the
known and established Laws, those who hold the
insigns of Power and Authority, whether *de jure*
or *de facto*, are justified from the apparent Necessi-
ty in committing them to the Tower. But when
the supposed Offenders are acting as Magistrate,
bound by a solemn Oath to administer Justice ac-
cording to Law, and by a particular Oath to guard
and preserve the Rights, Privileges, and Franchise
of the City of London; whoever says that any
Power upon Earth can exact an Obedience from
them, contrary to the Obligation of such Oaths,
sets up the Authority of Man against the Law of
the Land, and the supreme Law of the Al-
mighty.

When I read the History of the Disputes be-
tween the Houses of York and Lancaster, my Heart
bleeds for those who fell a Sacrifice for Conscience-
Sake to the King *de facto*; and I never read with-
out shuddering, of the Oaths imposed after the
Revolution upon those who had sworn Allegiance
to King James; but the Necessities of the Times
pleaded strongly in Excuse for the Imposers; but
the Obligation to break an Oath, and act in De-
fiance of God and our Conscience, was reserved
for these Days alone.

The Right to the Crown is not disputed, nor
are the People at War with legal Authority. The
two Chief Magistrates of the City were called up-
on by those whom the Laws of the Land had im-
powered to demand Justice at their Hands, and had
they refused it, the King, in his Bench, might
punish their Breach of Duty; and they would be
amenable for the Breach of their Oath, before that
Tribunal from whence is derived all Law, Power,
and Authority. They followed the Dictates of
their Conscience; they kept their Oath inviolate;
they obeyed the Law to the best of their Judge-
ment; and are now Prisoners in the Tower.

And suppose these Magistrates have erred in
their Judgement; suppose they have mistaken the
Law, are Magistrates to be sent to the Tower for
Errors and Mistakes? If so, God help the Lord
Chancellor and the twelve Judges, when their
Decrees and Judgements, which often happens,
are reversed in the House of Lords; would you
send them to the Tower? Where then will the
King find Men prodigal enough of Life or Li-
berty, to accept the forlorn Office of Law-Inter-
preters?

The Justices of Peace are by Law punishable in
the King's-Bench for Misbehaviour in their Office;
but do the Law-Books furnish a single instance
where a Magistrate has been fined, or imprisoned,
for an Error or Mistake in his Judgement, unless
wilful, corrupt, and glaring? otherways, however
contrary to Law, however infringing the Prero-
gative of the Crown, (I will not mention the Pri-
vilege of the House of Commons: A Minister and
his two officious Co-Catchpoles, ready for any
Mischief, say I must not) and however hurtful to
Religion, the Magistrate goes free from punish-
ment. Why then are the two unfortunate Magi-
strates now confined in the Tower? while they
feel the Iron Rod of Power, they are to look up-
on the Minister only as the visible Hand. The
first Mover lurks behind the Curtain.

The alarming Confusion which the City of Lon-
don is in, and which will soon spread thro' the whole
Kingdom, is the more affecting as it springs not from
any reasonable Cause, but from the Malice, Tur-
bulence, and arbitrary Will of the invisible Agent.
The King rests secure in the Hearts of his Subjects;
the People have no Complaints, but such as a free
People must always make against fallable Ministers;
they are the animal Spirits of a free Estate; the
Body Politick would grow dull, phlegmatick and
lethargick, without them: And yet we see as
violent Measures pursued, as if our most gracious
Sovereign acted upon the Principles of a Stuart,
or the People of England were rebellious Scotch,
or nonjuring Jacobites, the slavish Devotees of an
accursed Stuart; and the People look up to the
Pandora Cabinet for the Author of this Evil.
They do not whisper, but declare publicly in
every Assembly, even in the Face of the Minister,
who cannot deny it, who is the Fountain of all
our present Troubles.

GOD SAVE THE KING.

For The St. James's Chronicle.
To the P—v—t of Et—n C—e.
Rev. Sir,
T H E many Months which will most proba-
bly elapse before Dr. D—p—r's Fellow-
ship becomes actually void, and the great Number
of Candidates for it, give you an uncommon Op-
portunity to be careful and circumspect in the
Choice of a Person to succeed him. With these
Advantages you have given Proofs of an extraor-
dinary Sagacity, and Knowledge of Mankind.
No Excuse therefore can be drawn for you, either
from a Want of Time or Discernment, if you fill
up the Vacancy improperly. An Election, in
any respect wrong, must proceed from the delibe-
rate Motion of your Heart, against the Dictates
of your Judgment. Your Brother, a Stranger in
Eton, is so fond it seems of the Specimen you
have given him of King Henry's Bounty, as to be
desirous of a Fellowship, in Opposition to the
numerous Candidates, in every Sense unexcep-

tionable. I am told too, he is secretly desirous
by your Promises. I sincerely applaud the
tives of your Zeal, and am sorry that the Tem-
mony you would give it is united with a Breach
of the Statutes. If therefore your Resolution
assist him is not unalterably fixed, let me ad-
vise you seriously to consider the Consequences of
hereing to it.

As your College was the Origin and Seminar-
of the King's College, it was designed also to be
its End and Reward; that the choicest Member
of the Sister Society might pass the Evening of
their Days on the same peaceful Spot which has
been the Nursery of their Youth. The Founder
therefore binds you by Oath, upon any Vacancy,
always to elect into your College some worthy
Person, who either is, or has been, a Fellow of
King's College; and if no such be found there,
you may then, but not till then, elect a Stranger.
You see, Sir, that these Words shut the Door
against a Stranger, and do not admit him but on
Terms very improbable.

King Henry acted very wisely in providing that
against all Possibilities, however unlikely they
might be. To have done otherwise, would have
been a Contradiction to his Knowledge. The
Time of this general Ignorance and Depravity in
his Foundations might come, though it is not
very probable, at least I am authorized to pro-
nounce that it will not happen in this Generation;
for as the greater Part of King's College have been
early trained up by you in the Way they should
go, Solomon assures us they will not depart from
it when they are old.

It is true, the Statutes have made you Judge of
the Fitness of the Candidates to whom you give
your Vote; and where we have only Report for
the Ground of our Approbation, we should, in
Deference to your Authority, admit that he, whom
you reject, may have Faults which had escaped
our Penetration; and believing that you acted
from Principle, we would readily acknowledge
our Mistake. But sometimes a Person's Conduct
carries with it an internal Evidence, not at all in-
ferior to a positive Proof. Your Choice of Mr.
E—w—ds to be a Master of E—n School, and
your Continuance of him there, are Signals which
as plainly betray your Approbation of him, as if
you had subscribed your Name to it. If therefore,
whilst he is a Candidate, you should give your
Vote to a Stranger, we have a Right to require
the Reason of it. The Charge in which this De-
mand would involve you is of the most shocking
Nature, whatever you say in Justification of your-
self. If you should answer that he is unfit for your
Society, you are guilty of an enormous Breach
of Trust, in committing to his Care the Morals
of your Scholars, upon whom perhaps the Fate of
this Kingdom may one Day depend. If you say
that he is fit, but that you prefer this Stranger
from Motives of Brotherly Love, you are abso-
lutely guilty of P—y.

Now, Sir, it is your Interest seriously to reflect
upon these Things—Consider your Duty as P—v—t
is paramount to all private Engagements—Con-
sider that the Members of King's College have an
exclusive Right to your Fellowships, and that
Archbishop Laud, in his Metropolitan Visti-
tation, confirmed to them by a very wise and honest
Decree: That notwithstanding your Predecessors
have acted in Disobedience to them both, you are
forbid to abide by any Precedent that is not au-
thorised by the Statutes. Last of all, Sir, re-
member, that from your Disregard to the real In-
terests of the two Foundations, you cannot infer
the same Disposition in your Fellows. Though
you are an Alien, they are not; actuated by
Principles which cannot be supposed to influence
you, they will not tamely see the Bread of their
Fellow-Foundations taken away, and cast
unto Dogs. Jealous of the Sway that two alien
Brothers must unavoidably have in so small a So-
ciety, they will be united against your Designs,
and by routing the one, they will shew the other
what he might expect, if the Law did not secure
him in that Situation to which he had no Statu-
table Right.

I really am your Friend, and, for your own
Peace of Mind, sincerely wish you would drop
your Intention, though possibly it might be crown-
ed with present Success. The World does not
doubt your Love for your Brother; you have al-
ready given ample Proofs of it, by explaining
away the Statutes, to give him the valuable Liv-
ing of Mapledurham; and perhaps in a few
Years you may be able to do him a more signal
Service—The vacant Sees are sometimes filled
from the Headships of Schools, and you have
hinted to his Majesty, that the Provostship of Eton
is tenable with a Bishoprick.

CLERICUS

POSTSCRIPT.

LONDON.

Extract of a Letter from Dublin, March 10, 1775.
"The Parliament of Ireland met the 26th of
last Month. Lord T— had been three Years
collecting Recruits for Government. For the last
three Months particularly, since the Proclama-
tion for calling the Parliament, issued in Con-
sequence of the likelihood of a Spanish War, his
Art was left untried. The Places of Men not
turned out were promised—the offices of Men
yet dead were held out in Reversion—new Bodies
of Commissioners were invented, and Seats of
proffered to every Man who was profligate or
enough to listen to such Propositions.

"On the other Side, there was no Un-
cept what was produced by the Misconduct
Administration, which engaged the private
Connexions, and the most considerable Interests
of the Kingdom against Lord T—, who
without Concert amongst themselves. No Coun-
try Meetings, no Publick Associations were at-
tempted. One Side trusted to mere Recruits,
and the other to all possible C—e. The
result was, that Government had a Majority